In the Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 40

THE PEOPLE OF THE STATE OF CALIFORNIA,
Petitioner,

vs.

LYMAN E. BUZARD,
Respondent.

Respondent's Brief in Opposition to Petition for Writ of Certiorari

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THE PEOPLE OF THE STATE OF CALIFORNIA,
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Respondent's Brief in Opposition to Petition for Writ of Certiorari

Respondent, Captain Lyman E. Buzard, U.S.A.F., opposes the petition for a writ of certiorari to review the judgment of the California Supreme Court. That judgment reversed respondent's conviction for failure to register his car in California and failure to pay "appropriate fees", purportedly in violation of Section 4000 of the California Vehicle Code.

QUESTIONS PRESENTED

I. Whether the Soldiers' and Sailors' Relief Act of 1940, 50 U.S.C. App. § 574, when read with Section 46.16.010 of the Revised Code of Washington, prohibited California from

imposing license fees, taxes and excises on the automobile of petitioner, a serviceman and citizen of Washington, prior to the time that he first took his car on Washington highways.

II. Whether Section 6701 of the California Vehicle Code, as amended in 1959, denies respondent equal protection of the laws in violation of the 14th Amendment of the United States Constitution and in violation of Article 1, Section 11 of the California Constitution, in that it arbitarily discriminates against servicemen absent from California under "temporary duty orders."*

STATUTES INVOLVED

Pertinent federal, California and Washington statutes are set out as Appendices B, C, D and E of the Petition. In addition, respondent sets forth Sections 46.12.010 and 46.12.020 of the Revised Code of Washington, as Appendices A and B of this brief in opposition.

ARGUMENT IN OPPOSITION TO GRANTING OF THE WRIT

I. The Supreme Court of California Has Correctly Interpreted Washington Statutes and the Soldiers' and Sailors' Relief Act in Accord with the Applicable Decision of the United States Supreme Court.

A. The California Supreme Court's Decision Interprets the Soldiers' and Sailors' Relief Act Liberally in Favor of the Serviceman.

The United States Supreme Court has consistently and unequivocally ruled that the Soldiers' and Sailors' Relief Act must be construed liberally in favor of servicemen. *Boone v. Lightner,* 319 U.S. 561, 575 (1943); *LeMaistre v. Leffers,* 333 U.S. 1, 6 (1947). The opinion of the California

*The California Supreme Court did not reach this question; respondent wishes to preserve the argument, however, only if this Court is inclined to grant a writ of certiorari.

Supreme Court in this matter, a unanimous opinion concurred in by all seven members of the court, gives the statute such a liberal interpretation.

B. The California Supreme Court Correctly Ruled That Washington Required No Taxes at the Time of Respondent's Arrest.

The Soldiers' and Sailors' Relief Act, 50 U.S.C. App., § 574, speaking of servicemen, states:

> ". . . such person shall not be deemed to have lost a residence or domicile in any State . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other State . . . solely by reason of being, so absent. For the purposes of taxation in respect of the personal property . . . of any such person by any State . . . of which such person is not a resident or in which he is not domiciled . . . personal property shall not be deemed to be located or present in or to have a situs for taxation in such State. . . ."

Under subsection (2) of Section 574 automobiles are included as "personal property" within the meaning of the statute and the term "taxation" applies to automobile licenses, fees and excises, provided that the

> ". . . license, fee, or excise required by the State . . . of which the person is a resident or in which he is domiciled has been paid."

In the case at bar, respondent was assigned to Alabama on temporary duty for a period of four months. While there he purchased an automobile which he registered in Alabama, with Alabama license plates being issued to enable him to drive it in that state during the two months remaining of his tour of duty there.

He returned to California, again pursuant to official orders, in January 1960, and was arrested in late February

for failure to register the car in California and failure to pay California taxes and fees. The car at that time was still validly registered in Alabama and still carried valid Alabama license plates.

Petitioner argues that respondent does not come within the protection of Section 574 because he had not paid the fees "required by the State" of which he was a resident, namely, Washington. But under Washington law no fees were due and owing until respondent drove the car into Washington.

The Revised Code of Washington, Section 46.16.010, states:

> "It shall be unlawful for a person *to operate any vehicle over and along a public highway of this state* without first having obtained and having in full force and effect a current and proper vehicle license and display license number plates. . . ." (Emphasis supplied.)

No fees were therefore required to be paid by respondent until he drove his car on Washington highways. In the interim, even though he was a resident of Washington, there was nothing in Washington law to deny him a right to voluntarily register the car in Alabama and drive it outside Washington with Alabama license plates. The practical reasons for this are apparent.

The difficulties of registering an automobile via long distance, the delays occasioned by correspondence to obtain the necessary forms, might deny to a serviceman the use of his car for an extended period of time. Washington law has strict provisions requiring certificates of ownership as a prerequisite to registration. Sections 46.12.010, 46.12.020, Revised Code of Washington.* Forms for ownership docu-

*These statutes are set out as Appendix A and Appendix B to this brief.

ments, for registration and for license plates would all have to be obtained from the responsible Washington offices, returned to the serviceman and completed by him without advice or assistance by Washington officials familiar with such documents. They would then have to be returned to Washington for processing. After they were considered and acted upon by those officials, they would have to be returned to the serviceman. This would be the normal cumbersome routine; but further delays and hindrances could develop. Most important, however, under Section 46.12.030 of the Revised Code of Washington the applicant for a certificate of ownership must describe the vehicle and all encumbrances on it, and

> ". . . the director of licenses may in any instance, in addition to the information required on such application [for a certificate of ownership] require additional information *and a physical examination of the vehicle.*" (Portion in brackets and emphasis supplied.)

The plight of a serviceman in Alabama, attempting to register his car in Washington by mail, would be completely thwarted if the director chose to demand physical examination of the vehicle some two thousand and more miles away. It would be delayed interminably if the director chose to demand "additional information."

Petitioner contends that the word "required" in Section 574 means ". . . the fees levied, imposed, exacted or charged by the resident state." (Petition, page 14.) And it argues that even though no such fees are as yet due and payable the serviceman should be denied his exemption under the Relief Act. The difficulty with this reasoning is that it is not what Section 574 *says*. As the Supreme Court of California stated in its opinion:

> "Defendant [respondent] urges that he was not required to obtain a vehicle license and plates by his

domiciliary state except as a prerequisite to the operation of his vehicle 'over and along a public highway' of that state; that he has not driven his vehicle on such public highways; that, accordingly, no license charges or registration fees became due; that he has satisfied all licensing and registration obligations which that state required of him, and that he has likewise satisfied the proviso of the Relief Act. *The argument meets the literal and commonsense meaning of the pertinent statutory provision* . . . We cannot, as is urged, conclude that subdivision (2) [of Section 574] is intended to work to the serviceman's advantage only where a charge has been made by and paid to his domiciliary state. The statute is not couched in terms which flatly require the serviceman to have paid a fee, but rather in terms which accord to him the benefit when charges 'required by the State' have been paid. *These are the only charges which he must pay and when there are no charges made there must likewise be no requirement that he pay them.*" (Emphasis and portion in brackets supplied.) (Opinion; Petition, Appendix A; pages 22-23.)

This Court in *Dameron v. Brodhead*, 345 U.S. 322, 326; 97 L.Ed. 1041 (1953), stated:

> "*Congress appears to have chosen the broader technique of the statute carefully,* freeing servicemen from both income and property taxes imposed by any state by virtue of their presence there as a result of military orders. It saved the *sole right of taxation to the state or original residence whether or not that state exercised the right.*" (Emphasis supplied.)

This Court has thus ruled that a serviceman is afforded the protections of the Act if his state of residence imposes no tax; it follows as a matter of simple logic that if a tax is imposed as to some persons, but is as yet not imposed on this serviceman, that he also is protected.

C. The California Supreme Court Correctly Interprets the Relief Act to Assure Against Multiple Taxation.

This Court in *Dameron v. Brodhead,* supra, 345 U.S. 322, 326, 97 L.Ed. 1041 (1953), also ruled that the Relief Act is designed to prevent multiple taxation. Indeed, in the *Dameron* case the respondent urged that the Act applied only when multiple taxation was a "real possibility", but this Court firmly refused to apply any such limitation on its application.

In the instant case, as we have pointed out, respondent bought his car while on extended temporary duty in Alabama, more than 2500 miles from his home state and more than 2000 miles from his duty station in California. He voluntarily registered his car in Alabama and paid all Alabama fees at that time. No other alternative was open to him except to attempt to register it long distance, by mail. And as we have pointed out, the responsible officials in Washington are by statute given the right to refuse to register a car in that fashion. Therefore, if petitioner's argument is correct, respondent by necessity 1) had to pay Alabama fees, 2) he was then liable for California fees, and 3) the moment he first drove on Washington highways he was liable for Washington fees. At a minimum he would have been subject to triple taxation.

Triple taxation, however, is only part of the story. Petitioner drove the car back to his duty station in California by a direct route, starting in Alabama and passing through Mississippi, Louisiana, Texas, New Mexico, Arizona and Nevada—a total of eight states. If petitioner's argument is a valid one, then each of those eight states could properly have demanded that he pay all of their license fees, taxes and excises. *If petitioner's argument is a valid one, respondent had no protection against this sort of liability unless he could have forced Washington to accept (by mail)*

registration and license fees which were not yet required to be paid by him, for a car which Washington might well have refused to register.

The California Supreme Court in its opinion in the case at bar recognized that the Relief Act is designed to protect against multiple taxation and that to accept petitioner's argument would:

> ". . . lead us to the very results which the Relief Act, by its purpose, seeks to avoid. If, for instance, California may exact the instant charges from defendant [respondent], then so may any other state into which he brings his vehicle until such time as he enters his domiciliary state and pays the fees there required for the first time. Such a narrow construction would frustrate the obvious beneficent purpose of the act . . ." (Opinion; Petition, Appendix A, page 23.)

D. The Dameron Case Cannot Be Distinguished.

Petitioner strains to contend that *Dameron v. Brodhead* is not in point in the instant case as the Court was there concerned with personal property taxes in general, under subsection (1) of Section 574, and not with automobile fees, taxes and excises, under subsection (2). The argument is hardly persuasive as it begs the question. Automobile fees and taxes are treated precisely the same way by the Relief Act if such fees "required" by the home state have been paid; the question is whether fees were "required." In this case none were required and the discussion in *Dameron* is precisely in point; the Court's definition of the policy of the Relief Act as found in *Dameron,* applies with full force in the case at bar.

The California Supreme Court in its opinion states:

> "Although the court in *Dameron* had before it a question involving the taxation of personal property, nevertheless the Relief Act expressly includes within the

purview of section 574 the licensing of automobiles as taxation of personal property. It is true that automobiles are dealt with separately in subdivision (2) but the different treatment is only in respect to the manner in which vehicles may qualify to be treated as other personal property, and where it appears that the serviceman has paid such charges as may have been assessed by his domiciliary state the language of the statute leaves no room for different treatment insofar as tax or other charges are concerned. As the *Dameron* case cannot be distinguished in any material respect it follows that if the domiciliary state chooses not to exact a vehicular registration or licensing charge from its residents the prohibition against other states from doing so would appear to be well within the intent and purpose of the Relief Act." (Opinion; Petition, Appendix A, pages 24-25.)

E. Petitioner's Reliance on the Whiting Case Is Misdirected.

Petitioner attempts to argue that *Whiting v. City of Portsmouth*, 118 S.E. 2d 505 (Va. 1961), supports its position. This reliance is misdirected as the facts of the *Whiting* case have no parallel in the case at bar. Whiting, a serviceman, chose voluntarily to register his car in Virginia, the state where he was stationed, and paid all state taxes. *He had voluntarily chosen not to register it in Colorado, his state of domicile.* The issue was whether the City of Portsmouth, Virginia, where he lived, might assess him for *city* taxes. The court held that the city might do so because:

> ". . . appellant would be exempt from payment of the Portsmouth license tax only if he had paid a license tax thereon in Colorado, where he claimed his residence to be. Since it is admitted that he had not paid such license tax in that State, *or elsewhere than in Virginia,* he is therefore not exempt from the payment of the license tax assessed by the city of Portsmouth." 118 S.E. 2d at 507. (Emphasis supplied.)

Thus, the court never considered what is the situation in respondent's case, that is, the effect of there being no tax yet required by the serviceman's state of domicile. Furthermore, it never considered the effect of the payment of taxes in a state *other* than his state of domicile.

The Supreme Court of California considered petitioner's reliance on the *Whiting* case and stated:

> ". . . it does not appear from the opinion in that case [the *Whiting* case] whether the serviceman was *required* and had failed to pay fees in Colorado. Thus the issue herein raised was not considered or resolved by the Virginia court." (Emphasis the court's; portion in brackets supplied.)

F. The California Supreme Court's Decision Properly Recognizes That Automobile Registration Is Not in Issue.

Petitioner attempts to argue that a writ should be granted in this case because the opinion of the California Supreme Court "frustrates" proper registration of automobiles in California. The argument is specious as counsel for respondent has from the outset made it clear that California or any State might, as a proper incident of its police power, require the registration of non-residents' cars. It is the imposition of fees, taxes and penalties *as a condition* to such registration which is the problem. This position was stated at the trial in justice court (RT 25) and has been stated in respondent's various briefs.

The issues persented by this case, therefore, are limited, as the California Supreme Court recognized:

> "Defendant does not contend that California may not, as an exercise of its police power, require him to register his automobile. If fact, his attempt to register the vehicle independently of the payment of fees and penalties was frustrated by the department. Defendant's position is simply that the Soldiers' and Sailors' Civil

Relief Act of 1940 (hereinafter the Relief Act) prohibits the collection of such fees as an incident to a proper exercise of the police power or otherwise. As a consequence of the narrow question thus raised by the defendant, contentions which look to the purpose of registration in furtherance of proper law enforcement and administration fail to address themselves to the issue." (Opinion; Petition, Appendix A, pages 21-22.)

II. The 1959 Amendment to Section 6701 of the California Vehicle Code Denies Petitioner Equal Protection of the Laws.

Prior to 1959, Section 6701 of the California Vehicle Code would automatically have protected a serviceman in respondent's position—one whose regular duty station was in California but who purchased a car while absent from California on temporary duty orders. As then worded the statute gave full recognition to the provisions and spirit of the Soldiers' and Sailors' Relief Act. The statute, prior to 1959, read as follows:

> "Any nonresident owner of a foreign vehicle who is a member of the Armed Forces of the United States on active duty within this State shall be entitled to the exemption granted under Section 6700 under the conditions therein set forth. Any member of the Armed Forces, whether resident or nonresident, shall also be entitled to exemption from registration in respect to a vehicle owned by him upon which there is displayed a valid license plate or plates issued for such vehicle in a state where such owner was regularly assigned and stationed for duty by competent military orders at the time such license plate or plates were issued."

In 1959, however, the Legislature amended this statute by adding the following language:

> "Such competent military orders shall not include military orders for leave, for temporary duty, nor for any

other assignment of any nature requiring his presence outside the state where such owner was regularly assigned and stationed for duty."

This addition to the statute thus denies to the serviceman entering California from a temporary duty station the same protections afforded other servicemen entering the state. It is respondent's contention that this is an arbitrary classification which violates his rights to equal protection of the laws under the 14th Amendment of the United States Constitution and Article 1, § 11 of the California Constitution.

If respondent had come into California from Alabama, where he had been on permanent duty, with *either* Washington *or* Alabama plates on his car, there could have been no California tax imposed. But merely because he was in Alabama on "temporary duty" when he bought the car, California attempts to impose a tax on it. No explanation can be given to explain this classification which operates so harshly to penalize the helpless serviceman who has no choice but to obey his orders.

In the Army and Air Force temporary duty may extend up to six months; in the Navy it may last considerably longer as a serviceman is often assigned to a service school on temporary duty orders for periods of longer than one year and then reassigned to a more advanced school, also on temporary duty. Upon assignment or return to duty in California that serviceman would be excluded from the protections of Section 6701 merely because he had been absent on "temporary" duty orders.

Whatever might be the rationale of California denying the exemption of Section 6701 to a serviceman who *voluntarily* leaves California on leave or liberty, or otherwise, and purchases a car while so absent, no such rationale exists to

deny it to a serviceman who does so while absent pursuant to official temporary duty orders. No rationale exists to distinguish between the serviceman absent *involuntarily* pursuant to "temporary duty" orders while he would be protected if his orders had been classified as for "permanent duty".

The California Supreme Court has spoken authoritatively on the question of reasonable classification and equal protection of the laws. As that court stated, in *Department of Mental Hygiene v. McGilvery*, 50 Cal. 2d 742, 754 (1958):

> "Article I, section 11 of the California Constitution requires that all laws of a general nature have a uniform operation. This has been held generally to require a reasonable classification of persons upon whom the law is to operate. The classification must be one that is founded upon some natural or intrinsic or constitutional distinction. [Cases cited.] Likewise, those within the class, that is those persons similarly situated with respect to that law, must be subjected to equal burdens. [Case cited] The clause of the Fourteenth Amendment to the federal Constitution which prohibits a state from denying to 'any person within its jurisdiction the equal protection of the laws' has been similarly construed.
>
> "Equal protection of the law is not afforded when a statute imposes a particular disability upon a class arbitrarily selected from a larger number of persons, all of whom stand in the same relation to the burden imposed, and between which class and the others no reasonable distinction or substantial difference can be found to warrant the inclusion of the one and the exclusion of the other." (Portion in brackets supplied.)

The rigors of service life, the incessant change of duty station, the constant separation of the serviceman from his home and family, are harsh enough. His temporary absence

(which may extend for months at a time) from his permanent duty station, pursuant to temporary duty orders, should not be seen as an excuse to *increase* the hardship of the military man. Yet that is precisely what Section 6701, as amended, attempts to do.

III. Conclusion.

Respondent prays that the petition for writ of certiorari be denied.

Respectfully submitted,

C. Ray Robinson
Mary C. Fisher
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Dated, Merced, California
January 22, 1965.

(Appendices Follow)

Appendix A

REVISED CODE OF WASHINGTON

Section 46.12.010:

Certificates required to operate and sell vehicles. It shall be unlawful for any person to operate any vehicle in this state under a certificate of license registration of this state without securing and having in full force and effect a certificate of ownership therefor and it shall further be unlawful for any person to sell or transfer any vehicle without complying with all the provisions of this chapter relating to certificates of ownership and license registration of vehicles. Provided, That the provisions of this section relating to the sale of vehicles shall not apply to the first sale of vehicles by manufacturers and dealers: Provided Further, That nothing in this title shall be construed to prevent any person entitled thereto from securing a certificate of ownership upon a vehicle without securing a certificate of license registration and vehicle license plates, when, in the judgment of the director of licenses, it is proper to do so.

Appendix B

REVISED CODE OF WASHINGTON

Section 46.12.020:

Prerequisite to issuance of vehicle license and plates. No vehicle license number plates or certificate of license registration, whether original issue or duplicates, shall be issued or furnished by the director of licenses unless the applicant therefor shall at the same time make satisfactory application for a certificate of ownership or shall present satisfactory evidence that such a certificate of ownership covering such vehicle has been previously issued.